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ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

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No. 29A02-0804-CR-376

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August 6, 2008

BAKER, Chief Judge

Appellant-defendant Vernon D. Brady appeals his conviction for Possession of Marijuana,¹ a class A misdemeanor. Specifically, Brady argues that the State presented insufficient evidence that he constructively possessed the marijuana found in a vehicle in which he was a passenger. Finding no error, we affirm the judgment of the trial court.

FACTS

On October 7, 2007, Brady paid Ade Weathers \$15 to drive him and his girlfriend to Wal-Mart. Because Weathers was intoxicated and had a suspended license, Brady drove the vehicle to the store. Brady and his girlfriend were inside Wal-Mart for approximately ten or fifteen minutes. Weathers decided to drive the trio away from the store, with Brady sitting in the front passenger seat and his girlfriend in the backseat.

After Weathers had been driving for approximately ten minutes, Fishers Police Department Officer Reginald Jackson stopped the vehicle because it had a false registration. Officer Jackson subsequently arrested Weathers for driving with a suspended license. Officer Justin Lowrence quickly arrived at the scene. Brady and his girlfriend were asked to exit the vehicle so that the officers could conduct an inventory search incident to impoundment. While opening the passenger-side door to search the vehicle, Officer Lowrence found a green substance resembling wet chewing tobacco on “the little ledge in between the passenger’s seat and the passenger door, kind of . . . next to the middle of the seat.” Tr. p. 25. The substance field-tested positive for marijuana. Based on the location and nature of the substance, Officer Lowrence concluded that it

¹ Ind. Code § 35-48-4-11.

“had been in someone’s mouth, like it had been mashed up, and not chewed on, but it looked . . . like it had been in somebody’s mouth.” Id. Based on the proximity to where Brady had been seated, Officer Lowrence concluded that “[Brady] was almost sitting on top of it.” Id. When asked, Brady admitted to the officers that the marijuana was his. Id. at 18.

The State charged Brady with class A misdemeanor possession of marijuana on October 8, 2007. A bench trial was held on December 27, 2007, and Brady was found guilty as charged. The same day, the trial court imposed a one-year sentence, with 271 days suspended and 180 to be served on probation. Brady now appeals.

DISCUSSION AND DECISION

Brady argues that the State presented insufficient evidence to prove beyond a reasonable doubt that he constructively possessed the marijuana found in the vehicle. Brady emphasizes that he testified that he never admitted that the marijuana was his.

To convict Brady of class A misdemeanor possession of marijuana, the State had to prove beyond a reasonable doubt that Brady knowingly or intentionally possessed marijuana. I.C. § 35-48-4-11. When addressing sufficiency of the evidence challenges, we neither reweigh the evidence nor judge the credibility of the witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence and reasonable inferences therefrom that support the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). If there is conflicting evidence, we consider that evidence only in the light most favorable to the judgment. Id. The evidence is sufficient if an inference may reasonably be drawn from it to support the judgment. Id. at 147.

Constructive possession may support a conviction for a drug offense. Goliday v. State, 708 N.E.2d 4, 6 (Ind. 1999). In order to prove constructive possession, the State must demonstrate that the defendant had both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband. Id. To prove the intent element, the State must show the defendant's knowledge of the presence of the contraband. Donnegan v. State, 809 N.E.2d 966, 976 (Ind. Ct. App. 2004). This knowledge may be inferred from the exclusive dominion and control over the premises containing the contraband. Id. Additional circumstances include incriminating statements made by the defendant, attempted flight or furtive gestures, a drug manufacturing setting, proximity of the defendant to the drugs, drugs in plain view, and the location of the drugs in close proximity to items owned by the defendant. The capability requirement is met when the State demonstrates that the defendant was able to reduce the controlled substance to his personal possession. Goliday, 708 N.E.2d at 6.

The evidence shows that Brady had the capability to maintain control over the illicit substance. In fact, he was “almost sitting on top of it.” Tr. p. 25. Instead, the gravamen of Brady's argument is that he did not have the intent to maintain dominion and control over the substance. However, Brady made an incriminating statement at the crime scene and was in extremely close proximity to the marijuana. While Brady emphasizes that he testified at trial that he did not admit to the officers that the marijuana was his, the trial court acknowledged the conflicting evidence and noted that it was “going to accept the testimony of Officer Jackson, that there was an admission” Id. at 55. Because Brady's argument is an invitation for us to reweigh the evidence and

assess witness credibility, we must deny his request pursuant to our standard of review.

Thus, we affirm the conviction.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.